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May 24, 2002

HAND DELIVERED

Hyla P. Wagner, Senior Counsel,
Legal Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Request for Reconsideration and Clarification
Your File No. I-02-048

Dear Ms. Wagner:

This office represents Ms. Jan Wasson who is a professional campaign committee treasurer. On May 17, 2002, you issued to her the above-referenced advice letter in response to her request dated February 14, 2002. On her behalf, I respectfully request reconsideration of the advice offered as well as clarification of certain issues. I believe that the advice provided is erroneous, in part, and should be corrected as soon as possible. The basis of that belief is set forth below.

With respect to your advice regarding Question 1, I agree that controlled committees of statewide candidates are not subject to the contribution limits with respect to contributions made by them to pre-Prop 34 legislative candidates and to their controlled committees. The rationale for this conclusion is firmly grounded in Section 83 of Proposition 34 (as reaffirmed by the amendment of this section by Stats. 2001, Ch. 241, effective September 4, 2001), which delays the operative date of the contribution limits, *inter alia*, with respect to statewide candidates, until November 6, 2002. However, this is only part of the story. With respect to contributions **made to** statewide candidates by legislative candidates and their controlled committees, Regulation 18531.6(a) also controls.¹ The regulation provides, without ambiguity:

¹ Regulation 18531.6(e) limits the operation of the regulation with respect to candidates for statewide office. However, it is clearly applicable to legislative candidates and their controlled committees in terms of what they can contribute and receive.

- (1) **“There are no contribution limits in effect for elections held prior to January 1, 2001 for contributions made on or after January 1, 2001.**
- (2) **Contributions for an election held prior to January 1, 2001, may be accepted in an amount that exceeds net debts outstanding.”**

[Cal. Code of Regs., tit. 2, § 18531.6(a)(1) and (2)]

Regulation 18531.6 clarifies that Proposition 34 applies only to elections held after January 1, 2001 (or on or after November 6, 2002, with respect to statewide candidates, as defined). Under this regulation, Section 85305 simply does not apply with respect to contributions to pre-Prop 34 committees. **“No contribution limits,”** as used in the regulation, means exactly what it says. State candidate controlled committees, whether legislative or statewide, can contribute, without limits, to pre-Prop 34 committees. (Of course, should such legislative recipient committees wish to use the contributions for a 2002 or subsequent election, the transfer and attribution rules of Section 85306 and Regulation 18536 would apply, as you correctly indicate.)

I should also point out that it is illogical to conclude that, somehow, the maker, but not the recipient, of contributions is subject to the purported limits of Section 85305. You reach this result by applying Section 85305 but ignoring Regulation 18531.6 with respect to makers of contributions. Since Section 85305 only reaches contributors, recipients are left untouched. Mutuality of responsibility makes much more sense than imposing liability only on the contributor. This result can be reached by applying Regulation 18531.6 to both contributors and recipients as, I believe, the regulation was intended to apply.

I do seek clarification with respect to pre-Prop 34 “officeholder accounts.” I am unclear precisely what their status is. In light of the foregoing, including Regulation 18531.6, what limits, if any, apply to a pre-Prop 34 officeholder account committee or other committee controlled by a legislative officeholder transferring funds to another officeholder account committee controlled by a legislative officeholder?

With respect to your advice regarding Questions 2 and 3, your conclusions are contrary to both the express language of Proposition 34 and the obvious legislative intent as well. You conclude that under Section 84305, a committee controlled by a legislative candidate, whether pre or post-Proposition 34, may not make a contribution to any other candidate for elective state office, including statewide candidates, in excess of \$3,000 per election. This holds true, you opine, even with respect to contributions to statewide candidates running in elections held on or after November 6, 2002.

I agree that Section 84305 does limit to \$3,000 per election contributions by a committee controlled by a legislative candidate to a post-Prop 34 committee controlled by another legislative candidate. However, the \$3,000 limit is **not** applicable to contributions made to statewide candidates by committees controlled by a legislative candidate. There are no limits on such contributions with respect to 2002 elections. Thereafter, the limitations set forth in Section 85301(b) and (c) apply.

One need not go beyond the express statutory language to reach that conclusion.

Section 85305 provides:

“A candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective office in excess of the limits set forth in subdivision (a) of Section 85301.”

Section 85301(a) provides:

“A person, other than a small contributor committee, or political party, may not make to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office may not accept from a person, any contribution totaling more than three thousand dollars (\$3,000) per election.” [emphasis added]

Thus, by its express terms, the \$3,000 limit set forth in Section 85301(a) does not apply at all to a candidate for statewide elective office.

This conclusion is buttressed with respect to the 2002 elections by Proposition 34’s Section 83 (as reaffirmed by the amendment of this section by Stats. 2001, Ch. 241) that delays the effective date of the contribution limits to statewide candidates until after the 2002 General Election.

The record fully supports the conclusion that **none** of the contribution limits (including those included by reference in Section 85305) applies to statewide candidates in 2002.

- The “Analysis of the Conference Committee Report” for SB 1223 (which became Proposition 34), by the Office of Senate Floor Analysis, provided in Paragraph VII that the “...provisions of this bill **relating to campaign contributions** and expenditures shall apply to candidates for statewide elective office beginning on and after November 6, 2002.”² [emphasis added]
- “Comments” in the Assembly Floor Analysis to SB 1223 provided that the bill, if approved by the voters, will impose contribution limits and that it “...will apply to candidates for statewide office, including Governor, on and after November 6, 2002.

² Please note that copies of documents referenced in this letter are available in my files should you wish to examine them.

- The Title and Summary prepared by the Attorney General and included in the California Official Voter Information Guide by the Secretary of State provided, in part: “Effective 1/1/01, except statewide elective office effective 11/6/02.”
- The Analysis by the Legislative Analyst and included in the California Official Voter Information Guide by the Secretary of State provided, in part: “Campaigns for statewide elective office, such as Governor, would generally **not be affected** by the provisions of the measure until after the November 2002 election.” The use of the word “affected” is compelling evidence of an expansive reading of Section 85301(a) and Section 83. Clearly, statewide candidates could be significantly “affected” with respect to the 2002 elections should a \$3,000 limit on contributions by committees controlled by legislative candidates be operative. [emphasis added]
- The League of Women Voters of California pointed out in its own analysis of Proposition 34 that the measure “...would not even go into effect for statewide offices, including Governor and Insurance Commissioner, until after the 2002 election.”
- The primary opponent of Proposition 34, Californians Against Phony “Reform”-NO on 34, sponsored by League of Women Voters of California, AARP and California Common Cause, argued that the measure was full of loopholes, identifying as the number one loophole: “NO LIMITS ON CONTRIBUTIONS TO STATEWIDE CANDIDATES SUCH AS GOVERNOR AND INSURANCE COMMISSIONER UNTIL AFTER THE 2002 ELECTION!” In its “Frequently Asked Questions” piece, the committee said that “...under Proposition 34, candidates for Governor and Insurance Commissioner will have no restrictions on fundraising or spending until the 2006 election cycle.” Clearly the repetitive message to the voters was clear: **no restrictions** on fundraising by statewide candidates until after the November 2002 General Election. At no point was it imagined by opponents that there would be **any** limitations on what committees controlled by legislative candidates could give to statewide candidates until after the November 2002 General Election.

It is clear from the foregoing that legislators, the Governor and the voters believed that none of the contribution limits contained in Proposition 34 applied to statewide candidates with respect to the 2002 elections. The Fair Political Practices Commission is bound not only by the express language of the measure but by the obvious legislative (voter) intent.

Perhaps the most troubling aspect of your advice is your conclusion that the \$3,000 limit on contributions to statewide candidates from committees controlled by legislators applies after statewide candidates become subject to contribution limits on November 6, 2002. Your conclusion, I believe, is clearly erroneous for the following reasons:

- Your interpretation is directly contrary to the provisions of Section 85301(a) as referenced by Section 85305. As indicated earlier, Section 85301(a) excludes from its reach candidates for statewide elective office.

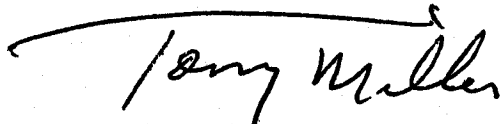
- Had Section 85305 been intended to impose, as you maintain, a \$3,000 limit on all state candidate controlled committee contributions to all other state candidate controlled committees including statewide candidates, then it would have been simple enough to include a specific \$3,000 figure in Section 85305.
- The obvious intent of Proposition 34 with respect to state candidate contributions to statewide candidates (beginning November 6, 2002) was succinctly set forth in the “Analysis of the Conference Committee Report” for SB 1223, by the Office of Senate Floor Analysis. In Paragraph II., titled “Contribution Limits,” the analysis provides, in applicable part: “This bill would subject candidate-to-candidate transfers **to the contribution limits outlined above.** (85305)” [emphasis added] “The contribution limits outlined above” were \$3,000 for legislative candidates, \$5,000 for BOE & statewide candidates, and \$20,000 with respect to Governor.
- The Senate Floor Analysis was correct. Legislative candidate controlled committee contributions to statewide candidates, beginning November 6, 2002, will be limited to \$5,000 per election but \$20,000 per election for gubernatorial candidates.
- In accord is the Analysis of the Legislative Analyst in the California Official Voter Information Guide. In her analysis she indicates that the measure repeals a provision of Proposition 208 that “...bans transfers of funds from any state or local candidate or officeholder to another candidate, but establishes **limits** on such transfers from state candidates.” [emphasis added] Significantly, the Legislative Analyst uses the word “limits” rather than “a limit,” indicating that there is not a uniform \$3,000 limit but rather a variety of “limits” based on the type of recipient candidate.
- The primary opponent of Proposition 34, Californians Against Phony “Reform”-NO on 34, sponsored by League of Women Voters of California, AARP and California Common Cause, agreed with the Legislative Analyst and Senate Floor Analysis in this regard and so advised the voters repeatedly. For example, in its information handout comparing the provisions of Proposition 208 and Proposition 34, with specific reference to Proposition 34’s Section 85305, the opponents wrote: “Repeals Prop 208 limits. Permits transfers up to contribution limit.” Neither the opponents nor the voters had an inkling that Section 85305 could be read as you propose to read it.

I should also point out, again, that it is illogical to conclude that, somehow, the maker, but not the recipient, of contributions is subject to the purported limits of Section 85305. You reach this result by disengaging Section 85305 from Section 85301(b) and (c). It is much more logical, and consistent with Proposition 34, to read the provisions as a comprehensive regulatory scheme. Section 85305 was aimed directly at what has historically been argued to be an area of abuse: legislator contributions to other legislators. This section makes it clear that a \$3,000 contribution limit applies in these cases. Section 85301(a) subjects both the contributor and the recipient to the same limit.

As to transfers from legislative candidate controlled committees to statewide candidates (which has traditionally not been thought of as an area of abuse), Section 85301(b) and (c) impose mutual limits on the contributor and the recipient. (The limits, of course, only apply with respect to statewide candidates on or after November 6, 2002.) As indicated earlier, mutuality of responsibility makes much more sense than imposing liability only on the contributor.

I respectfully request reconsideration of the above-referenced advice letter and clarification with respect to "officeholder" account committee transfers. Should you have any questions regarding this letter, please do not hesitate to let me know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony Miller". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the left.

TONY MILLER
Attorney for Jan Wasson

cc: Ms. Jan Wasson



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May 24, 2002

BY E-MAIL AND U.S. MAIL

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Legal Division
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428 J Street, Suite 620
Sacramento, CA 95814

Re: Request for Reconsideration
Your File No. I-02-048

ADDENDUM

Dear Ms. Wagner:

After delivering the above-referenced "Request for Reconsideration," it occurred to me that there is yet another reason why Section 85305 should not be read to limit to \$3,000 per election the amount that can be contributed by a candidate for elective state office or committee controlled by that candidate to a candidate for statewide elective office. That is because Section 85305 targets not only candidate committees but also the candidates themselves. This is of no consequence if Section 85305 is read to apply only to legislator-to-legislator contributions since the \$3,000 per election limit applies to both the contributor and the recipient, based on Section 85301(a). However, if it is read as you propose, then candidates are not permitted to contribute **personally** to candidates for statewide office to the same extent that non-candidates can. This raises serious Equal Protection issues. I think it is unlikely that the disparity in treatment between candidates and non-candidates in this regard could be justified in the context of an Equal Protection analysis.

Please include this letter as an addendum to the letter submitted earlier.

Sincerely,

TONY MILLER